

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 STATE OF TEXAS, ET AL § CASE NO. 1:18-CV-00068
5 VERSUS § HOUSTON, TEXAS
6 UNITED STATES OF AMERICA, § WEDNESDAY,
ET AL § NOVEMBER 14, 2018
7 § 10:14 A.M. TO 10:26 A.M.

8 INITIAL CONFERENCE

9 BEFORE THE HONORABLE FRANCES H. STACY
10 UNITED STATES MAGISTRATE JUDGE

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13 APPEARANCES: SEE NEXT PAGE

14 COURT RECORDER: PAUL YEBERNETSKY
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1 HOUSTON, TEXAS; WEDNESDAY, NOVEMBER 14, 2018; 10:14 A.M.

2 THE COURT: The next case is 2018-68, State of
3 Texas, et al versus USA. Approach the bench and we're going
4 to ask everyone to announce their names.

5 Come on up, near the microphone. We're going to
6 start on the left and go to the right. Please stand near
7 the microphone when you announce your name and state who you
8 represent.

9 MS. PERALES: Good morning, Your Honor, Nina
10 Perales for the Defendant Intevenor DACA Recipients.

11 Would you like me to introduce my co-counsel or
12 have them introduce themselves?

13 THE COURT: I'd like their names. I'd like them
14 to state their own names, please.

15 MS. PERALES: Thank you.

16 MR. HALLWARD-DRIEMEIER: Your Honor, Doug
17 Hallward-Driemeier from Ropes and Gray also on behalf of the
18 DACA Recipient Defendant Intervenors.

19 MR. LEVINE: Good morning, Your Honor, Kenneth
20 Levine for the State of New Jersey.

21 MR. MORAMARO: Good morning, Your Honor. Glenn
22 Moramarco also for the State of New Jersey.

23 THE COURT: Good morning.

24 MS. AVILA: Good morning, Your Honor, Alejandro
25 Avila with MALDEF also on behalf of the DACA Recipient

1 Intervenor.

2 MR. SALMON: Good morning, Your Honor, Jack Salmon
3 with MALDEF on behalf of the DACA Recipient Intervenor.

4 THE COURT: Good morning.

5 MS. LIN: Good morning, Your Honor, Raishay Lin
6 from Ropes and Gray also on behalf of the DACA Recipient
7 Defendant Intervenor.

8 THE COURT: All right.

9 MR. ROBINS: Good morning, Your Honor, Jeffrey
10 Robins from the Department of Justice on behalf of the
11 Federal Defendants.

12 MR. HU: Daniel Hu, Assistant United States
13 Attorney for the Federal Defendants.

14 THE COURT: Hi, Mr. Hu.

15 MR. DISHER: Good morning, Your Honor, Todd Disher
16 with the Texas Attorney General's Office for the Plaintiff
17 States.

18 MR. BIGGS: Good morning, Your Honor, Adam Biggs
19 with the Texas Attorney General's Office on behalf of the
20 Plaintiff States.

21 MR. BITTER: Good morning, Your Honor. Adam
22 Bittner with the office of the Attorney General of Texas
23 also for the Plaintiff States.

24 THE COURT: All right. Is there anyone who did
25 not sign our Docket Sheet?

1 (No audible response.)

2 THE COURT: Everybody signed in?

3 (No audible response.)

4 THE COURT: All right. So on -- where is it --
5 the 31st of August 2018, Judge Hanen declined to issue
6 preliminary injunctive relief. And so I have visited with
7 him and he's asked that I enter a schedule for your trial.

8 And are there any motions that are pending right
9 now?

10 MR. DISHER: Your Honor, there are, I believe, two
11 pending motions. The first is -- actually two related
12 motions, emergency intervention motions on behalf of a
13 pro se potential intervenor.

14 The Plaintiff States have filed a motion in
15 response and -- or excuse me response and opposition and
16 that is pending at this time.

17 THE COURT: What's the docket number of the
18 emergency motion to intervene?

19 MR. DISHER: Docket Number 323 and Docket
20 Number 325.

21 THE COURT: That's your response?

22 MR. DISHER: No, those are the two emergency
23 motions --

24 THE COURT: Oh.

25 MR. DISHER: -- to intervene and then our response

1 and opposition is Docket Number 329.

2 THE COURT: Thank you.

3 And is there another motion?

4 MR. DISHER: Yes, Your Honor, New Jersey has filed
5 a motion related to the Federal Defendants' Answer. And
6 that is at -- the motion is Docket Number 334. And then I
7 believe that the Federal Defendants filed a response
8 yesterday.

9 MR. ROBINS: That's correct, Your Honor.

10 THE COURT: Okay. The -- okay, so I was
11 instructed that trial date about 18 months from now seemed
12 reasonable to Judge Hanen.

13 Does that seem reasonable to the parties?

14 MS. PERALES: Yes, Your Honor.

15 MR. DISHER: Your Honor, on behalf of the
16 Plaintiff States, that seems too long to us. The Plaintiffs
17 and Defendants both agree that this case can be resolved at
18 this point through cross motions for summary judgment.

19 And if there are any remaining fact issues, a
20 limited period of 60 to 90 days of discovery would be
21 necessary to allow the intervenors to seek whatever
22 discovery they think that they need.

23 And so we think we could have a trial date
24 certainly this spring, in three to six months.

25 THE COURT: Deadline for filing dispositive

1 motions does not prevent you from filing them whenever --
2 earlier whenever you think it's appropriate, all right?

3 MR. DISHER: Okay.

4 MS. PERALES: Your Honor, --

5 THE COURT: And I'm picking that date because
6 Judge Hanen said so.

7 Yes.

8 MS. PERALES: Yes, Your Honor. We have proposed a
9 schedule that is in line with what Judge Hanen has
10 suggested.

11 THE COURT: Do you have it written down? May I
12 look at that?

13 MS. PERALES: Yes, Your Honor. It's also in the
14 joint case management -- the joint Discovery Case Management
15 Plan.

16 THE COURT: I don't think I have a copy of that.
17 May I see yours, schedule?

18 MS. PERALES: We have a copy for Your Honor as
19 well. And this would have expert's designation and reports
20 for Plaintiffs, then Federal Defendants, then Defendant
21 Intervenors, close of fact and expert discovery October 11,
22 2019.

23 And then dispositive motions deadline 30 days
24 after that. That would give us still another six months
25 prior to trial.

1 THE COURT: Okay.

2 MS. PERALES: And we have a copy of that for Your
3 Honor.

4 THE COURT: Thank you.

5 All right, well I'm not sure I will adopt all
6 these dates, but let me take a look at it.

7 MS. PERALES: Thank you, Your Honor.

8 THE COURT: These are not agreed, right?

9 MR. DISHER: Correct, Your Honor.

10 THE COURT: Okay, wow. Joint Discovery Case
11 Management Plan, but not agreed as far as all the dates are
12 concerned.

13 MR. ROBINS: Your Honor, if I may?

14 THE COURT: Yes.

15 MR. ROBINS: The Federal Defendants' position in
16 this matter is that as two of the causes of action are under
17 the Administrative Procedure Act and the third is companion
18 cause of action, under the Constitution's take care cause,
19 the position we've stated in Rule 26(f) is that this is a
20 matter that should be exempt from initial disclosures and
21 discovery and decided on a record.

22 THE COURT: That's not something I'm going to
23 decide.

24 MR. ROBINS: Yes, Your Honor.

25 THE COURT: And I'm just going to set deadlines

1 and if you can't agree to what is and is not discoverable,
2 it must be addressed by formal motion.

3 MR. ROBINS: Yes, Your Honor.

4 THE COURT: All right. The -- so what I'm going
5 to do is pick a trial date and going to formulate the
6 schedule going backwards.

7 So, May of next -- May of 2020, I think is the --
8 18 months from now; is that true?

9 MS. PERALES: Yes, Your Honor.

10 THE COURT: Okay. Let's look it up here. So if
11 we picked -- where's Judge Hanen's schedule? Do we have
12 Judge Hanen's schedule? I don't know.

13 Okay. So in May, if I set you for the trial term,
14 the two-week period beginning May the 18th of 2020, then
15 your Docket Call will be on the 15th of May and the
16 pre-trial order will be filed by May the 5th.

17 Okay, four months before that we have to have the
18 motion deadline for dispositive and non-dispositive motions.
19 So that will be November 14th for Item 5 and 6, 2019, about
20 a year from now.

21 Then, okay, the discovery deadline will be
22 September the 4th -- that's actually -- let's make it
23 August 21, 2019. And then the Defendants' expert witness
24 deadline will be June the 30th and the Plaintiffs' expert
25 deadline will be April the 30th, 2019.

1 And the -- nobody anticipates adding new parties
2 at this stage, I hope.

3 MR. DISHER: Not at this point, Your Honor.

4 MS. PERALES: Not at this time, Your Honor.

5 THE COURT: But motions for relief to amend
6 pleadings would have to be filed by January 15th, 2019.

7 You know, when you have enough -- there's no
8 reason why you can't conduct discovery. You know, the scope
9 of that if you don't agree to it, it has to be resolved by
10 formal motion.

11 The dispositive motion deadline doesn't govern --
12 doesn't prevent earlier filing of motions at all.

13 MR. DISHER: Understood, Your Honor.

14 THE COURT: At all. Okay, I'm going to let Judge
15 Hanen know that these motions that you've outlined at the
16 beginning are all ripe and the parties request a ruling.

17 MR. DISHER: Thank you, Your Honor.

18 MR. MORAMARCO: Just to note on the Motion to
19 Strike, Docket 334, the most recent one, the opposition was
20 filed yesterday and we have a right to reply. So it's not
21 fully briefed yet.

22 THE COURT: When would you like that reply date?

23 MR. MORAMARCO: Just a --

24 THE COURT: Pick your date.

25 MR. MORAMARCO: We're going to file, I mean, on

1 our 10 days, we have the day after Thanksgiving, but I was
2 going to file the day before Thanksgiving.

3 THE COURT: Okay. Is that agreeable?

4 MR. ROBINS: Yes, Your Honor.

5 THE COURT: All right, anything else we need to
6 discuss?

7 MS. PERALES: Your Honor, because there's an usual
8 posture of the parties here where the Defendants and the
9 Plaintiffs are aligned on many of the merits issues, if we
10 wanted to ask for a small modification of the expert
11 disclosure deadline to allow the Defendant Intervenors to
12 disclose their experts somewhat later than Federal
13 Defendants, should we make a motion for modification?

14 THE COURT: Did the parties agree to this?

15 MR. DISHER: Your Honor, maybe if we could instead
16 move up the deadline for Federal Defendants to disclose
17 their experts, rather than move it back.

18 THE COURT: There's plenty of room to adjust those
19 dates.

20 MR. DISHER: Sure.

21 THE COURT: I mean, lots and lots of time. So,
22 but we want to make sure that the -- so if we adopted
23 June 30th for the Defendant Intervenors and April the 30th
24 for the Defendants or people who don't have the burden of
25 proof? And so new deadline for the Plaintiffs' expert

1 witness deadline of, say, February 28th.

2 MR. DISHER: That is agreeable to the Plaintiffs.

3 THE COURT: Does everybody like that idea?

4 MS. PERALES: Yes, Your Honor. Thank you.

5 THE COURT: All right, so the Plaintiff expert
6 deadline is described as the deadline for the party with the
7 burden of proof on a certain issue who is applying, you
8 know, expert testimony to establish that burden.

9 These deadlines also do require the service of the
10 written expert report on your opponent by that deadline.

11 So for the -- just to recite, the Plaintiffs'
12 expert deadline is February 28th, the Defendants' expert
13 deadline is April 30th. The Defendant Intervenor's expert
14 deadline is June 30th, 2019.

15 And then you still have until August 21 to conduct
16 depositions of those experts.

17 Is that enough time?

18 MR. DISHER: Yes, Your Honor.

19 MS. PERALES: Yes, Your Honor.

20 THE COURT: All right. Thank you for clearing
21 that up.

22 MS. PERALES: Thank you, Your Honor.

23 THE COURT: All right. Good luck with your case.
24 Thank you for appearing.

25 MR. DISHER: Thank you, Your Honor.

1 MS. PERALES: Thank you.

2 (Proceedings adjourned at 10:26 a.m.)

3 * * * * *

4 I certify that the foregoing is a correct
5 transcript to the best of my ability produced from the
6 electronic sound recording of the proceedings in the above-
7 entitled matter.

8 /S/ MARY D. HENRY

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